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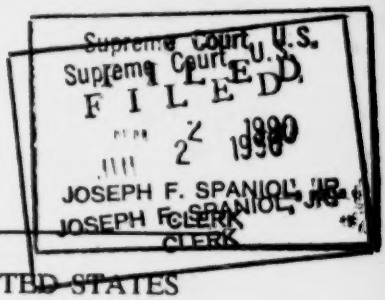
No. 89-1634



IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

UNITED STATES OF AMERICA, Appellee/Respondent

v.

STEVEN LYMAN, Appellant/Petitioner

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

REPLY BRIEF TO BRIEF IN OPPOSITION

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ATTORNEY FOR PETITIONER

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The government would have this Court view Lyman's Petition as simply one that challenges the sufficiency of the evidence. (Brief in Opposition, Question Presented.) If that were the issue we wouldn't have bothered with a Certiorari Petition.

The gun in question was found inside a cloth bag, one of four identical bags, each labelled "Crown Royal" as in the liquor; each one, in turn, closed by draw strings. From the outside there was no way to determine which bag had the gun. Yes, the gun was loaded, but with bullets that were manufactured in 1981, likely sold in 1982, corroborating Lyman's testimony that he had purchased the firearm that same year, had fired it once or twice at a range, and had not used it since. No one ever saw Lyman use that gun during or in relation to a drug trafficking crime. He never did.

In passing 18 U.S.C. 924 (c)(1) Congress intended that a putative defendant not be convicted for this offense unless the defendant "***intended*** to use the gun if a contingency arose or to make his escape." S.Rep.No. 225, 98th Cong. and Admin. News 3182, 3492 n. 10 (emphasis added). Surely no one will say Lyman had the gun so that he would use it to escape from his own apartment. That's absurd. To say, as the government does in its opposition brief, that Lyman had the gun around if a contingency arose (Brief in Opposition, page 4), is nonsense as well. The fact of the matter is that the gun was not readily available because it was in a shut bag, on a shelf with other bags. If Lyman had the gun on his person, in a kitchen drawer, in a holster available for ready use, well, he'd be guilty of a 924(c) violation beyond any doubt. Instead the trial court, and the

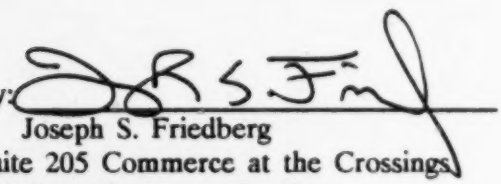
Court of Appeals for the Eighth Circuit, found the gun was available for "possible" use, which is to justify the conviction on the basis of surmise, and defeat the congressional intent.

Lyman's Petition ought to be granted.

Dated this 2nd day of July, 1990.

Respectfully submitted,

JOSEPH S. FRIEDBERG, CHARTERED

By: 

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